

Consideration of approval of process to update records retention schedules for the Natural Resources Commission including the Division of Hearings and the AOPA Committee; Administrative Cause No. 12-101A

Indiana Code §§ 5-15-5.1 et seq. establishes the Indiana Commission on Public Records (*ICPR*) to administer the retention of records, which includes:

...all documentation of the informational, communicative, or decision making processes of state government, its agencies and subdivisions made or received by any agency of state government or its employees in connection with the transaction of public business or government functions, which documentation is created, received, retained, maintained, or filed by that agency or its successors as evidence of its activities or because of the informational value of the data in the documentation, and which is generated on:

- (1) paper or paper substitutes;
- (2) photographic or chemically based media;
- (3) magnetic, electronic, or machine readable media; or
- (4) any other materials, regardless of form or characteristics.

...

The ICPR, in fulfilling its responsibilities has established the GENERAL RECORDS RETENTION AND DISPOSITION SCHEDULE FOR ALL STATE OF INDIANA ADMINISTRATIVE AGENCIES that establishes a variety of different retention schedules for different types of agency records. These schedules address the maintenance of actual records, the transfer of actual records to the ICPR Division of Archives, the microfilming of records and the maintenance of the microfilm as well as the destruction of records.

At the Natural Resources Commission Division of Hearings' ("*Division*") retreat held on September 19, 2012, the determination was that a former retention schedule approved for the Division is obsolete and needs to be modernized. The general schedules were reviewed, and it was determined that many of them, such as those applicable to Natural Resources Commission Minutes and Division general files, are sufficient for application to certain types of records typically associated with the workings of the Natural Resources Commission ("*NRC*") and the Division.

In addition to an agency's ability to rely upon the general retention schedules for records of a type common amongst many agencies, I.C. 5-15-5.1-10 requires an agency to cooperate with the ICPR in the fulfillment of its duties. The agency's responsibility includes submitting a recommended retention schedule for other less common or agency specific types of records. Based upon preliminary discussions the Division has identified the need to recommend to the ICPR a record retention schedule for its adjudicatory records, its mediation records, and records related to public hearings.

Furthermore, the ICPR established an Electronic Records Policy with an effective date of September 19, 2012. This policy addresses all electronic records including email

communications. The Division is continuing its review of this policy for compliance as well as to determine whether the establishment of an agency specific electronic record policy may be appropriate.

The Division of Hearings recommends the Natural Resources Commission approve the following process to modernize the records retention schedules of the NRC, the NRC's AOPA Committee, and the Division:

With continuing advice and consent by the NRC Chair and the Chair of the AOPA Committee, the Division would:

1. Identify the types of NRC, its AOPA Committee, and Division records and correlate those record types with the applicable general schedule for purposes of ensuring the appropriate and consistent handling of the NRC's and the Division's records.
2. Recommend and coordinate with the ICPR in the establishment of agency specific retention schedules as determined appropriate. These presently include schedules to address the agency's adjudicatory records, mediation records and public hearing records.
3. Engage in continued review of the Electronic Record Policy and proceed to coordinate with the ICPR in the establishment of an agency specific policy as appropriate.
4. Following the development of a completed schedule (including coordination with the ICPR), present the schedule to the NRC for comment and any prospective amendments.